

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

WILLIE SHOTWELL,)
Plaintiff,)
v.)
NATIONAL UNION FIRE INSURANCE) No. _____
COMPANY)
OF PITTSBURGH, PA,)
Defendant.

**DEFENDANT NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA'S NOTICE OF REMOVAL**

Defendant National Union Fire Insurance Company of Pittsburgh, PA (“NUFIC”) removes this action from the Chancery Court for the Thirtieth Judicial District at Memphis to the United States District Court, Western District of Tennessee, pursuant to 28 U.S.C. §§ 1332(a)(1) (diversity jurisdiction), 1441, and 1446.

I. FACTUAL SUMMARY

On August 30, 2012, Plaintiff, Willie Shotwell, (“Plaintiff”) filed in the Chancery Court for the Thirtieth Judicial District at Memphis an action naming NUFIC as Defendant. This action was assigned Case Number CH-12-1372-1.

On September 12, 2012, NUFIC received a copy of the summons and complaint, but Plaintiff served under Tennessee Code Annotated § 56-2-504, and at the date of this filing it does not appear that service under the statute is complete. NUFIC, therefore, does not waive any defenses to service or to sufficiency of service. A copy of the entire state court file, including the

summons and the complaint, is incorporated herein by reference and is also attached as Exhibit A.

II. BASIS FOR REMOVAL

The above-described civil action is a civil action over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332 and is one which may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441, in that complete diversity of citizenship exists between parties.

Upon information and belief, at the time of the commencement of the action, the Complaint alleges that the Plaintiff is a citizen of the State of Tennessee. Defendant National Union Fire Insurance Company of Pittsburgh, PA is a corporation duly organized under the laws of Pennsylvania, with its principal place of business in the State of New York. This action is of a civil nature and involves a controversy wholly between citizens of different states.

Although Plaintiff's Complaint fails to allege the amount in controversy, it is apparent that the amount of damages that Plaintiff is seeking and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Plaintiff's complaint alleges that he is entitled to insurance benefits in the amount of \$682.00 (six hundred eighty-two) dollars per month, or \$8,184 (eight thousand one hundred eighty four) dollars per year, until he reaches the age of seventy five. He prays for that amount from the date of the termination of the benefit through the date of judgment and going forward. Upon information and belief, Plaintiff was born in 1955 and is fifty-seven years old. Thus, Plaintiff seeks at least eighteen years of benefits, plus treble damages for violation of the Tennessee Consumer Protection Act, the 25% bad faith penalty under Tennessee Code Annotated § 56-7-105, and attorney fees under both statutes. *See*

(Complaint *Prayer*). Consequently, this lawsuit exceeds the \$75,000 amount in controversy, exclusive of interests and costs, and this Court has original jurisdiction over this matter.

III. INITIAL SERVICE OF COMPLAINT

On September 12, 2012, NUFIC received a copy of the summons and complaint, but Plaintiff served under Tennessee Code Annotated § 56-2-504. At the date of this filing, it does not appear that service under the statute is complete. NUFIC, therefore, does not waive any defenses to service or to sufficiency of service. Nevertheless, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because it was filed within 30 days of Defendant's receipt of the Complaint. *See, e.g., Page v. City of Southfield*, 45 F.3d 128, 130 n.1 (6th Cir. 1995).

V. VENUE OF REMOVED ACTION

Venue of this removed action is proper pursuant to 28 U.S.C. § 1446(a) because this Court is the United States District Court for the district and division embracing the place wherein the removed action was pending.

VI. PLEADINGS IN THE STATE COURT ACTION

Pursuant to 28 U.S.C. § 1446(d), the Defendant is filing this Notice of Removal with this Court, serving a copy of the Notice upon all counsel of record, and filing a copy in the Chancery Court for the Thirtieth Judicial District at Memphis. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the summons and Plaintiff's Complaint, as well as all additional papers on file with the state court, are attached hereto as Exhibit A. The summons, Plaintiff's Complaint with exhibits, Plaintiffs First Request for Production of Documents and Tangible things to Defendant and Plaintiff's First Set of Interrogatories to Defendant are the only documents that NUFIC has received in this action.

CONCLUSION

WHEREFORE, NUFIC respectfully requests that this action, now pending as Case No. CH-12-1372-1 in the Chancery Court for the Thirtieth Judicial District at Memphis, be removed to this Court, and that this Court proceed with the case as if originally initiated herein.

Respectfully submitted,

LEWIS, KING, KRIEG & WALDROP, PC

By /s/ Daniel W. Olivas

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CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of October, 2012, a copy of the foregoing Notice of Removal was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

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